



# OPLA~Notes

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for the Maine State Legislature*

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## Newsletter Greetings

Welcome to the first edition of OPLA~Notes for 2004. This edition includes an article on the United States Supreme Court's decision in *McConnell v. Federal Elections Commission* dealing with the McCain-Feingold Bipartisan Campaign Finance Reform Act of 2002 and an article on the current legislative session. This newsletter also includes an article on major substantive rules authorized for final adoption during the First Regular Session of the 121<sup>st</sup> Legislature and new rule-making authorities enacted during that legislative session. Lastly, this edition of the newsletter includes useful Internet sites and a listing of recent publications by OPLA.



## McConnell v. Federal Election Commission

On March 27, 2002, President Bush signed into law the McCain-Feingold Bipartisan Campaign Reform Act of 2002, Public Law No. 107-155. The Act contains many substantive and technical changes to the Federal Election Campaign Act of 1971, including prohibiting national political parties from raising and spending "soft money" and adding restrictions on "issue ads."

"Soft money" encompasses any contributions not regulated by federal election laws. Technically, soft money contributions are to be used only for state and local political activities, such as voter registration, get-out-the-vote drives, and bumper stickers and for generic party-building activities, such as TV ads supporting the Democratic and Republican platforms, without naming specific candidates. Typically, however, the funds pay for other items – including office overhead, the purchase of computer equipment, and other behind-the-scenes expenses – thus freeing up other contributions to the party to be used directly to support candidates.

The Bipartisan Campaign Reform Act of 2002 bans the raising of soft money by national parties and federal candidates or officials and restricts soft money spending by state parties on what the Act defines as "federal election activities." The Act does, however, allow for some use of soft money under certain conditions for specified federal election activities by state and local parties.

Second, the Act regulates issue advocacy by creating a new term in federal election law, "electioneering communication"—political advertisements that refer to a clearly identified federal candidate and are broadcast within 30 days of a primary or 60 days of a general elec-

- The requirement that special interest groups use only regulated “hard money” to pay for electioneering communications and disclose where that money came from. Hard money consists of contributions from individuals or political action committees (PACs), subject to contribution limits and disclosure requirements.
- The mandate that broadcast stations compile a public record of political ads and who paid for them.

The Court invalidated two provisions of the law: the ban on campaign contributions from minors and the requirement that parties choose between making either independent expenditures or coordinated expenditures on behalf of candidates. A table summarizing the Supreme Court’s decision is found on page 3.

### What The Ruling Means for States

According to the National Conference of State Legislatures, the Bipartisan Campaign Finance Reform Act regulates the campaigns of federal candidates, so most of its provisions do not apply to state campaigns. The one exception pertains to the fundraising activities of state political parties. Under the campaign finance law, any campaign activity a state political party engages in on behalf of a federal candidate must be paid for with "hard money" - money raised in the limited amounts permitted by the law. Individuals are limited to giving no more than \$10,000 per year to each state, district, and local political party committee. Individuals also are limited to a total of \$37,500 in the aggregate per two-year election cycle to all committees other than national party committees. This includes PACs, state and local party committees. Large, unregulated "soft money" contributions may no longer be routed through state political parties to help pay for federal campaigns. These limits apply only to funds that a state or local political party raises to fund activities relating to a federal candidate's campaign. State laws still apply to fundraising for state and local campaign activities.

the unlimited contributions to parties from corporations, unions and wealthy individuals.

- The limit on state parties spending soft money that affects federal elections.
- The new definition of campaign advertisements subject to campaign finance regulation and disclosure, as any broadcast ad aired immediately before an election that depicts a federal candidate and targets that candidate’s constituency (known as “electioneering communications”). Such ads are now covered under campaign finance limits and disclosure requirements if they are aired 60 days before a general election or 30 days before a primary election.



### 2004 Legislative Session Convenes; April 7th Adjournment Targeted

Legislators filed 366 bill requests for introduction to the Second Regular Session of the 121<sup>st</sup> Legislature before the October 1, 2003 cloture deadline. At its October 22, 2003 meeting, the Legislative Council initially

**Table 1: Summary of Supreme Court Decision in *McConnell v. Federal Elections Commission***

	Provisions in the BCRA	Supreme Court decision	Impact of decision
<b>National party soft money</b>	Prohibits national parties from raising or spending soft money.	Prohibition upheld.	National parties may not raise or spend soft money.
<b>State and local party "federal election activities"</b>	Requires state & local parties to pay for federal election activities entirely with hard money or a mix of hard money and "Levin funds." <sup>1</sup>	Requirement upheld.	State and local parties must use hard money for federal election activities.
<b>Soft money fundraising by federal candidates and officeholders</b>	Prohibits federal candidates and officeholders from raising or spending soft money, with certain exceptions.	Prohibition upheld.	Federal candidates and officeholders may not raise soft money (with certain exceptions).
<b>Issue ads; Prohibitions</b>	Prohibits corporations and labor unions from using soft money to pay for "electioneering communications" -- broadcast ads that mention a federal candidate or officeholder within 30 days of a primary or 60 days of a general election and are targeted to that person's constituents (certain exceptions apply).	Prohibition upheld.	Corporations and labor organizations may not use soft money to pay for electioneering communications that run within 30 days of a primary election or 60 days of a general election.
<b>Issue ads; Disclosure</b>	Requires disclosure of "electioneering communications" (defined above) in excess of \$10,000 per year.	Disclosure requirement upheld.	Electioneering communications must be disclosed to the FEC.
<b>Contribution limits</b>	Increases the dollar limits on contributions from individuals to candidates and political parties.	Increased limits upheld.	Individuals may make larger contributions to candidates and political parties.
<b>Independent &amp; coordinated expenditures by political parties</b>	Requires a political party spending money in a general election campaign to choose between making coordinated expenditures on behalf of its candidate or independent expenditures on behalf of its candidate, but not both.	"Choice of expenditure" rule declared unconstitutional.	A political party may now make both coordinated expenditures and independent expenditures on behalf of its candidates in the same general election campaign.
<b>Contributions by minors</b>	Prohibits minors from making contributions to candidates and political parties.	Prohibition on contributions by minors declared unconstitutional.	Minors may now make contributions to candidates and political parties.

<sup>1</sup>**Limited State and Local Party Soft Money Exception for Voter Registration/Get-Out-The-Vote:** Exception made for state/local parties' funding of generic voter registration and GOTV, which may be funded with soft money limited to \$10,000 per source if permissible under state law. Contributors may include corporations and labor unions, if state law permits. Money raised under this exception must meet the following conditions:

- (1) federal officeholders and national parties may not raise "Levin Amendment" funds;
- (2) all receipts and disbursements of "Levin Amendment" funds must be disclosed;
- (3) party committees in two or more states, or two or more party committees in the same state, are prohibited from jointly raising "Levin Amendment" funds;
- (4) a state party committee cannot raise the money for use in other states;
- (5) "Levin Amendment" funds cannot be used for federal-candidate specific or generic advertising;
- (6) "Levin Amendment" activities must be funded consistent with FEC hard money or soft money allocation rules;
- (7) the state or local party must raise its own matching hard money (i.e. the state party cannot transfer hard money to local parties to meet the matching requirement); and
- (8) "Levin Amendment" funds cannot be transferred between party committees.

approved 109 of those requests. Prospective sponsors subsequently filed appeals on 69 of the rejected bills; and the Council considered those requests again in November of 2003. The Legislative Council admitted 21 of the appealed bills. In addition, 69 departmental and independent agency bills were filed for introduction prior to the session. Besides new bills introduced this year, 162 bills were carried over in committees from the First Regular Session. At the beginning of the session, the total of new bills and carry over bills was 361, which represented the anticipated workload for the year. As the session progressed, the total number of bills has been increased by the introduction of bills pursuant to law, study legislation, bills filed by the Governor and after deadline requests filed by legislators and approved by the Legislative Council.

At the time this article was written, the exact number of bills to be considered by the Legislature this year is not known, but the total may be approximately 500 bills. For comparison purposes, 2 years ago, the Second Regular Session of the 120<sup>th</sup> Legislature considered 510 bills; 2 years before that the Second Regular Session of the 119<sup>th</sup> Legislature considered 748 bills; and in 1998 the Second Regular Session dealt with 560 bills.

Following passage of LD 1828, the Fiscal Year 2003-04 supplemental budget bill, the Second Regular Session of the 121<sup>st</sup> Legislature adjourned on January 30, 2004. On February 3, 2004, the Legislature reconvened in Special Session. Matters under consideration at the time of adjournment and due to come before the Legislature during the Second Regular Session were authorized to be considered by the Second Special Session of the 121<sup>st</sup> Legislature. The April 7, 2004 goal for adjournment and the goals for committees to complete their work established at the beginning of the Second Regular Session continue to apply during the Second Special Session.



### **Legislative Review Of Agency Rules: 2003 Update**

The 121<sup>st</sup> Legislature completed review of several major substantive rules under the Maine Administrative Procedure Act (MAPA) in the year 2003. Since amendments to the MAPA were enacted in 1995, certain agency rules known as major substantive rules may not be finally adopted or enforced by an agency until they have been reviewed by the Legislature. Review of major substantive rules was instituted to address the concern of legisla-

tors that agencies sometimes fail to comply with the intent of the Legislature in adopting rules and that the Legislative branch needs to exert sufficient oversight of Executive Branch rule-making activities.

Major substantive rules are agency rules that the Legislature has designated as such in the authorizing legislation. Ordinarily they will be rules that the Legislature, when granting rule making authority, anticipates will be controversial or complex or that will have a significant impact on the public. Since 1996 when the first major substantive rules were authorized by the Legislature, 159 agency rules have been designated as major substantive. Examples of major substantive rules requiring Legislative approval are rules establishing the qualifications for the issuance of a provisional teacher certificate, confidentiality of health care provider information, access to home health care under Medicaid and community industrial building projects. Rules that are not designated major substantive by the Legislature are considered routine technical rules and are not subject to legislative review. Of the 159 agency rules designated as major substantive since 1997, 10 have been redesignated as routine technical rules by the Legislature.

Following review of major substantive rules, the Legislature may authorize final adoption as proposed by the agency, authorize adoption with specified changes to be made by the agency or deny authorization for final adoption. Prior to final adoption as authorized by the Legislature, major substantive rules are only provisionally adopted and may not be enforced by the agency. If the legislature fails to act on major substantive rules during the session they are submitted for review, the agency may finally adopt and implement them without further legislative approval.

The review process for a major substantive rule by the Legislature consists of a referral of the rule in the form of a legislative resolve to the appropriate joint standing committee; review and consideration of the rule identified in the resolve by the committee; and issuance of a committee report recommending action on the resolve to the full Legislature. The committee's review includes consideration of whether the rule exceeds the scope of the agency's authority; conflicts with other laws; is necessary to accomplish the objectives of the authorizing legislation; and is reasonable in its impact on the public. Both chambers of the Legislature consider the committee report and, if passed, send it to the Governor for signature.

During the First Regular Session of the 121<sup>st</sup> Legislature in 2003, the Legislature reviewed 15 major substantive

rules submitted by agencies. Of the 15 rules submitted, 5 were amendments to existing major substantive rules. The 15 rules were each presented to the Legislature in the form of a resolve. The resolves were referred to 8 different committees, most were scheduled for hearing, and all were discussed in committee work session and reported out. All of the rules were approved for final adoption. Eight of the rules were approved as submitted; seven were approved with changes to be made by the agency.

In addition to review of provisionally adopted major substantive rules, the Legislature passed legislation in 2003 granting new rulemaking authority or amending rulemaking authority of certain agencies. In all, 15 new major substantive rules requiring legislative review were authorized by laws passed in 2003. Examples of those 15 major substantive rules include, liquidation harvesting, essential services and program funding, coastal sand dunes, quality criteria for managed care health plans and drinking water well construction. By way of comparison, 56 routine technical rules not requiring legislative review were authorized by the Legislature that year.

## Internet Intersection

### Policy and Government



**Federal Elections Commission:** The Federal Elections Commission website includes information on campaign finance reports and data, reporting forms and filing information, campaign finance law resources, elections and voting information and current election news stories.

[www.fec.gov](http://www.fec.gov)

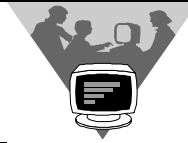
**STAT-USA:** This website is a service of the U.S. Department of Commerce and provides information on U.S. business and economic trade news and data.

[www.stat-usa.gov](http://www.stat-usa.gov)

**Law and Legislative Reference Library:** Provides access to the URSUS catalog, collections information, reference information, legislative history instructions, interlibrary loan information and lists of Justices for the Maine Supreme Judicial Court and Maine Attorneys General.

[www.state.me.us/legis/lawlib](http://www.state.me.us/legis/lawlib)

### News and Technology



**Newslibrary.com:** This website offers paid access to over 200 newspapers and other news sources. The site provides search options by location and topic and also allows the user to customize their search.

[www.Newslibrary.com](http://www.Newslibrary.com)

**Beginners Central:** This website offers a user's guide to the Internet. The site guides users through the basic concepts and practical details of using the Internet. Topics include file downloading, email and news groups, and also includes a chapter on Internet myths.

[www.northernwebs.com/bc/](http://www.northernwebs.com/bc/)

### Reference



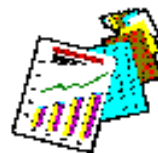
**TerraServer-USA:** TerraServer-USA provides free public access to a vast data store of maps and aerial photographs of the United States. The user can select a location on a map or enter a place name or the user can also select to view an aerial map of several famous sites, including National parks or sports stadiums.

<http://terraserwer.microsoft.com>

**Webopedia:** This website provides an online dictionary for computer and Internet terms.

[www.pcwebopedia.com](http://www.pcwebopedia.com)

### General Interest



**Federal Citizen Information Center:** Since 1970, the Federal Citizen Information Center (FCIC) has been a trusted one-stop shop for answers to questions about consumer problems and government services. The website includes information by topics and includes information on recalls and scams, as well as links to other consumer information.

[www.pueblo.gsa.gov](http://www.pueblo.gsa.gov)



## OPLA Publications

- **Study Reports** – Final reports of legislative study commissions that have recently completed their work are listed below. In addition, a listing of study reports of legislative committees and commissions categorized by year beginning in 1973 is available from OPLA. For printed copies of any of these reports, please contact the Office of Policy and Legal Analysis. The first copy of a report is free; additional copies are available at a nominal cost. In addition, many of the recent legislative studies staffed by OPLA are available on the OPLA website at the following web address:

[www.state.me.us/legis/opla/reports2.htm](http://www.state.me.us/legis/opla/reports2.htm)

- **Final Report of the Commission to Study Community Safety and Sex Offender Accountability**
- **Final Report of the Committee to Study Compliance with Maine's Freedom of Access Laws**
- **Final Report of the Commission to Review the Budget Process of the Workers' Compensation Board**

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## A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees and study commissions, including providing policy and legal research and analysis, coordinating the committee process, drafting bills and amendments, analyzing budget bills in cooperation with the Office of Fiscal and Program Review and preparing legislative proposals, reports and recommendations.

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Director: David C. Elliott

Editor: Darlene Shores Lynch, Senior  
Legislative Researcher

Article Contributors: David Elliott, Director and  
Darlene Shores Lynch, Senior Legislative Re-  
searcher

We welcome your comments and suggestions.  
Contact the Office of Policy and Legal Analysis by  
writing to 13 State House Station, Augusta, Maine  
04333; calling 287-1670; or stopping by Room 215  
of the Cross Office Building. The newsletter is  
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[www.state.me.us/legis/opla/newslet.htm](http://www.state.me.us/legis/opla/newslet.htm)

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